

46 Am. Jur. 2d Judges § 152

American Jurisprudence, Second Edition | February 2022 Update

Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

5. Prior Participation in, Connection with, or Knowledge of the Case or Parties as Grounds for Disqualification

c. Prior Participation in or Connection with Case as Attorney as Grounds for Disqualification

§ 152. Prior participation of judge in or connection with case as attorney as grounds for disqualification, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  47(1), 47(2)

A.L.R. Library

[Prior Representation or Activity as Prosecuting Attorney as Disqualifying Judge from Sitting or Acting in Criminal Case](#), 85 A.L.R.5th 471

Trial Strategy

[Disqualification of Trial Judge for Cause](#), 50 Am. Jur. Proof of Facts 3d 449

Prior representation or activity as attorney or counsel to a party disqualifies a judge from sitting or acting in a cause or proceeding,¹ at least where the judge was of counsel in the same cause or controversy or on the same issue as that involved in the case he or she is called upon to try.²

Some courts have taken the position that the disqualification exists even in the absence of statute,³ while others have said that a judge who has been "of counsel" is not disqualified in the absence of statute.⁴

© 2022 Thomson Reuters. 33-34B © 2022 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Smith v. Rabb, 95 Ariz. 49, 386 P.2d 649 (1963); In re Disqualification of Pepple, 47 Ohio St. 3d 606, 546 N.E.2d 1298 (1989); Hidalgo County Water Control and Imp. Dist. No. 1 v. Boysen, 354 S.W.2d 420 (Tex. Civ. App. San Antonio 1962), writ refused, (May 23, 1962).
- 2 Wickoff v. James, 159 Cal. App. 2d 664, 324 P.2d 661 (3d Dist. 1958); Head v. Waldrup, 197 Ga. 500, 29 S.E.2d 561 (1944); Sharp v. Howard County, 327 Md. 17, 607 A.2d 545 (1992).
- 3 Roberts v. State, 161 So. 2d 877 (Fla. 2d DCA 1964).
- 4 State ex rel. Mitchell v. Sage Stores Co., 157 Kan. 622, 143 P.2d 652 (1943); Hamilton County v. Aurora Nat. Bank, 89 Neb. 256, 131 N.W. 221 (1911).
As to statutes providing for disqualification, see § 153.
As to canons and rules providing for disqualification, see § 154.

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.